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No. 05-1474

FILED
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SUPREME COURT, U.S.

In The

Supreme Court of the United States

SHAHLA POURGHOLAM,

Petitioner,

v.

ADVANCED TELEMARKETING CORP., d/b/a AEGIS COMMUNICATIONS GROUP INC,

Respondent.

On Petition for Rehearing for a Writ of Certiorari to the United States Court of Appeals For the Fifth Circuit

PETITION FOR REHEARING FOR A WRIT OF CERTIORARI

SHAHLA POURGHOLAM
PRO SE PETITIONER
P O BOX 824311
DALLAS, TX 75382
shahlap@msn.com

OCTOBER 2006

LIST OF PARTIES

PRTITIONER:
Shahla Pourgholam, Pro Se Petitioner, Appellant.

RESPONDENT:
Advanced Telemarketing Corp., d/b/a Aegis Communications Group, Inc.,

Alisa L. Pittman, Attorney for Respondent/Appellee
Advanced Telemarketing Group d/b/a Aegis Communications Group, Inc.

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TCHRA and Title VII of Civil Rights Act of 1964, Section 704 (a), 42 U.S. C. § 2000e-3(a), et seq; Section 706(g), 42 U.S.C. § 2000e-5(g); as amended. 42 U.S. C.§ 1001 et, 42 U.S.C §2000e, et seq. 1964, 1983, 1991,42 U.S. C. § 2000e-5(f)(3), Tex. Lab. Code § 21.051 (1), et seq; the common law of the State of Texas, and the Constitution of the State of Texas.
U.S. CONST., amend IV
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Section 702, Section 703, Section 704, Section 706 (1), 706 (2)(A)(C)(D)(E)(F); Section 706, 5 U.S.C. § 706 (2000), APA § 554(c), 5 U.S.C. § 554 (c) (2000); APA § 706 (2) (A), 5 U.S.C. § 706 (2)(A)(2000).
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AEGIS SUPERVISOR "DARRYL STEEN'S" REGISTERED SEX OFFENDER TERMS AND CONDITIONS OF PAROLE

As a condition of his parole Darryl Steen was not to go in, on, or about **where** children commonly gather**, nor shall he supervise** or participate in any program that includes as

participants persons who are 17 years of age or younger Darryl Steen is not to **possess,** or to cause to **be purchased or** subscribed to, any literature, or videotapes **which** depict sexually explicit images, nude or partially nude people, **nor communicate or cause to communicate with a person for sexually explicit purposes through telecommunications or any other electronic means, including 1-900 services.**

Darryl Steen is not to cause to communicate with a person nude or partially nude **people.**

As a condition of his Parole Darryl Steen is not to own, posses, use, prohibited weapon or illegal weapon nor attempt or threaten to use any tool, implement **or object to** cause or threaten to cause any bodily injury.

As a condition of his Parole Darryl Steen is not to associate with persons of criminal background.

Darryl Steen was under mandatory Sex Offender Supervision and had to adhere to curfew **specified by his supervising parole officer.**

As a condition of his parole Darryl Steen is assigned to the highest level of supervision caseload.

As a condition of his parole, Darryl Steen is to be electronically monitored as approved by release's supervising parole officer that **Darryl Steen is not to participate in any**

volunteer or volunteer any services **without prior Board Panel approval.**

In paragraph 13 of his parole conditions, Darryl Steen as not to operate a motor vehicle unless specifically authorized by his supervising parole officer. Darryl Steen had three cars an economy size metallic blue economy car, a light yellow with wooden pattern brown stripe American made station wagon car, and a white van.

OPINION OF THE SUPREME COURT OF THE UNITED STATES

On 10/02/2006 Supreme Court of the United States denied Ms. Pourgholam Petition for a Writ of Certiorari.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit that gives rise to this Petition has been designated for limited publication or is unpublished, please see Pet. APP. One. Pages D-10 to D-11 in support of Ms. Pourgholam Petition for a Writ of Certiorari. **This is despite the fact that the Court of Appeals for the Fifth Circuit in Schweitzer v. Advanced Telemarketing** did not hold that the jury had favored Schweitzer, **but over turned the Jury's Verdict** and granted Advanced Telemarketing d/b/a Aegis Communications Group **a new trial** because the jury's verdict was against Aegis and the jury had awarded attorney's fees to Schweitzer. **On return with special instructions, Schweitzer lost her lawsuit and her case of age discrimination was dismissed; Please see Pet. APP. Two. R-52. Aegis also have had 10 other discrimination lawsuits, each and everyone of the discrimination lawsuits against Aegis has been dismissed in Federal Court for the Fifth Circuit, please see Pet APP Two. Page R-52.**

STATEMENT OF JURISDICTION

The date on which the United States Court of Appeals for the Fifth Circuit decided my case was on February 7th, 2006. Appellant's Petition for Panel Rehearing was postmark on February 21st, 2006. Appellant's case was dismissed because the court had quoted Defendant's assertion that the court and the jury **had favored** Defendant. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). In accordance with Supreme Court Rule 13.1, Ms. Pourgholam Petition for a Writ of Certiorari had been filed within 90 days. On October 2nd, 2006 the Supreme Court of the United States denied Ms. Pourgholam Petition for a Writ of Certiorari. In conformance with Rule 44 of the United States Supreme Court, this Petition for Rehearing for a Writ of Certiorari is filed within 25 days of the entry of the Supreme Court of the United States decision.

REASONS FOR GRANTING THE WRIT, STATEMENT OF THE CASE, STATEMENTS OF GENUINE ISSUES OF MATERIAL FACTS, ARGUMENTS, AND AUTHORITIES

It is central to due process that the courts and agencies must consider relevant evidences.[1] The Fifth

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[1] [See United States Constitution, Amendment IV and V; *Saunders v. Shaw*, 244 U.S. 317 (1917); Administrative Procedure Act ("APA"), Section 702, Section 703, Section 704, Section 706, Section 706 (1); Section 706 (2)(A)(C)(D)(E)(F); U.S.C. § 706 (2000), APA § 554(c), 5 U.S.C. § 554 (c) (2000); APA § 706 (2)(A), 5 U.S.C. § 706 (2)(A)(2000);

Amendment to the United States Constitution states in relevant part:

No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

The lead case interpreting the APA, requires that reviewing courts consider the *entire record* when determine whether the courts findings of fact are based on substantial evidence, "the court may not scour the record to find its own basis for decision." APA § 706 (2) (A), 5 U.S.C. § 706 (2)(A)(2000), the decisions must be reasoned and not arbitrary or capricious. **The court does not do its duty** when it merely decides upon a poor record; the panel should not dismiss this case on the false basis that there is no record, and the reviewing panel cannot supply a basis for a decision without specific references to the record.[2]

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the court shall give all interested parties opportunity for – (1) the submission and consideration of facts; *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951)].

[2] [*Isbrandtsen Co. v. United States*, 96 F. Supp. 883, 892, (S.D.N.Y. 1951); Since the matters of this case involve violations of State and Federal TCHRA and Title VII, as amended, human rights, Constitutional Rights, State and Federal laws, FCC and FTC Rules and Regulations, Child and Adult Porn, threats with gun and assaults, pregnant employees that had forced abortions or were sent to Psychiatric Centers while working for Aegis and Aegis client(s), false advertisement, Obstruction of Justice and Perjury, and the fact that the relief is available; it would be appropriate for this court to grant Ms. Pourgholam Petition for A Writ of Certiorari so that the case can be totally reviewed with substantial and conclusive evidences; [Petition for A Writ of Certiorari, Pages1-30; Pet. App II, K - V; Appellant Brief, Pages 1-30; Appellant Reply Brief, Pages 1-15; and Appellant's Petition for Rehearing en banc, Pages 1-14; *Walter Fuller Aircraft v. Rep of Philippines*, 965 F.2d 1375,

The United States Supreme Court held in *Moses H. Cone Mem. Hosp v. Mercury Constr. Corp.*, 460 U.S. 1 (1983), that a case is immediately appealable as a final decision when the order terminates the case from federal district court. As explained, the order(s) appealed from conclusively determines the disputed question. Furthermore, Ms. Pourgholam appeal "resolves an important issue completely separate from the merits of the action." *Coopers*, 437 U.S. 468. "**An order that amounts to a refusal to adjudicate the merits plainly presents an important issue separate from the merits.**" *Moses H. Cone*, 460 U.S. at 12. In the present case the review of the orders of the district court had been roadblock to dismissal of the case and final judgment. *Moses H. Cone*, 460 U.S. at 12 n. 13. The court's orders present an important issue completely separate from the merits of Plaintiff's claims. In addition, denial of immediate review would render impossible any review whatsoever.[3]

It is also important to note that in this case opposing counsel had made improper and inflammatory arguments in front of the jury in bad faith. This court has the power to grant a review of this case based on its appraisal of the

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1380 (5th Cir. 1992); *Moses H. Cone Mem. Hosp v. Mercury Constr. Corp.*, 460 U.S. 1 (1983)].

3 [*Hines v. Artois*, 513 F.2d 726, 730 (5th Cir. 1976); *United States v. Garner*, 749 F.2d 281, 288 n.8 (5th Cir. 1985); *Cooper & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978); *Firestone Tire& Rubber Co. v. Risjord*, 449 U.S. 368, 376 (1981); *Firestone*, 449 U.S. at 376; *Johnson v. Ford Motor Co.*, 988 F.2d 573, 582 (5th Cir. 1993)].

fairness of the trial and reliability of the jury's verdict.[4] *Williston basin Interstate pipeline Co. v. FERC*, 165 F. 3d 54 (D.C. Cir. 1999) holds that where there is an exceptional situational or policy change the change must be applied to existing cases. The essence of Williston is that a remand is required where the court changes the basis for its decision because the decision-making cannot be arbitrary.[5]

Accordingly, Plaintiff meets her burden of *prima facie case and Defendant's pretextual reasons* for discriminating against Plaintiff in violation of Title VII because in the instant case Plaintiff had established prima facie case and presented evidences that Defendant's reasons were a pretext for unlawful discrimination. Plaintiff had established that (a) Plaintiff was member of protected class(es); (b) Plaintiff was clearly qualified for her position; (c) Plaintiff was wrongfully and/or constructively discharged, demoted, and denied promotion; (d) after Darryl Steen had

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4 [Texas Criminal Code of Procedure, Article, 42.12, Texas Penal Code Chapter, 7, 20, 21, 22; prejudicial and incurable argument – J - § 4, § 5, and § 6; USCA 18 § 1503 and 1623; Relevant Portions of Texas Code of Criminal Procedure, Article 21.14(a) – Perjury and aggravated Perjury before a grand jury is unlawful; *Gray v. Bicknell*. 86 F.3d 1472, 1480, (8th Cir. 1996); *Smith v. Transworld Drilling Co.*, 773 F.2d 610, 612-613 (5th Cir. 1985); *Ruvalcaba v. City of Los Angeles*. 64 F.3d 1323, 1328, (9th Cir. 1996)].

5 [*Williston basin Interstate pipeline Co. v. FERC*, 165 f. 3d 54 (D.C. Cir. 1999); The Court of Appeals for the Fifth Circuit in Schweitzer v. Advanced Telemarketing did not hold that the jury had favored Schweitzer, but over turned the Jury's Verdict and granted Advanced Telemarketing d/b/a Aegis Communications Group a new trial because the jury's verdict was against Aegis and the jury had awarded attorney's fees to Schweitzer. On return with special instructions, Schweitzer lost her lawsuit and her case of age discrimination was dismissed].

Terminated Plaintiff, Defendant had never disclosed and failed to submit in Defendant's First and Second Motions for Summary Judgment and at the trial of this case that the person that Defendant had hired to replace Ms. Pourgholam was an Iranian female. (Defendant acted in a manner to indicate that the decisions made against Ms. Pourgholam were based on her national origin).

Furthermore, Defendant obstructed justice and defamed Plaintiff's character because Defendant took advantage of Defendant's Motion in Limine **to eliminate** evidences from the federal grand jury.[6] Thus, Plaintiff had established that: (a) Defendant acted intentionally or recklessly toward Plaintiff; (b) Defendant's conduct was extreme and outrageous; (c) Defendant's actions caused Plaintiff severe emotional distress; (d) the emotional distress suffered by Plaintiff was severe. **Therefore, Plaintiff meets her burden to show *severe Intentional Infliction of Emotional Distress.***[7]

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[6] [R. #171, Order on 03/18/2005, Second Page, Paragraph (1), (2), (3), (4), and (5); Benners v. Blanks Color Imaging, Inc., S.W.3d-, 2004 WL 937902, at * __ (Tex. App.-Dallas May 2, 2004) (no pet.h.).

[7] [In addition, in Defendant's Appellee's Brief, Defendant asserts, and/or applies, and/or confirms Plaintiff's claim that Defendant's direct and/or indirect associated hospitals; doctors, healthcare workers, and expert witness had misdiagnosed Plaintiff. [Appellee's Brief, Page 39; 52] As such, Defendant's conduct is sanctionable for publicly defaming Plaintiff's character in the presence of the court and in the presence of the jury. Defendant's defenses were false; Defendant had argued that Plaintiff did not have marks on her neck when she went to emergency room. [Appellee's Brief Page 44]. Plaintiff was prescribed medication for rash (marks) that were on Plaintiff's neck during this same visit. [Defendant's Trial Exhibit #113, Emergency Room visit on 02/13/02, doctor's instruction and medications prescribed, specifically shows medication for rash (marks on Plaintiff's neck); Similarly, on

Daubert, provides the analytical framework for determine whether expert testimony is reliable, relevant, and admissible under rule 701, 702, 703, 704, 705, and 706 of the Federal Rules of Evidence. *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 592-593, 579, 113 s. Ct. 2786, 125 L. Ed. 2d 469 (1993). The Court erred in not striking and excluding Defendant's Expert Witness after Defendant's attorney Alisa Pittman on Direct Examination of Dr./Mr. Kay Hale lied to the jury that Dr./Mr. Kay Hale had never met and never had any relationship with Defendant's Law Firm.[8] If Defendant's

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Sunday 06/03/2001 at 8:30 pm at night, Darryl Steen had signed off Plaintiff and took Plaintiff to Secured Quality Room for One-On-One session in an area that no one else was there and never return Plaintiff back to the phones. [Appellant's USCA Record Excerpts Tab 16, Pages SP-249, SP-241, SP-244, Particularly Page SP-244; Tab 17, Pages SP-474, SP-514]. On 06/05/2001, Dr. Michael Tran, Defendant's in network doctor had checked Plaintiff and misrecorded the date of the visit as "06/05/2007" and misreported the name of the company as "SBC", and misdiagnosed Plaintiff as psychosomatic. [Appellant's USCA Record Excerpts Tab 17, Page SP-514]. However, Dr. Tran in his deposition had said that the Plaintiff's painful vaginal bleeding on 07/31/2001 was due to prolonged antibiotics. [Plaintiff's Appendix in Support of R. #166]. As such Defendant's argument that Plaintiff was paranoid with psychotic features is untrue. [Appellee Brief, Page 43].

[8] [Court room transcript Page 398, lines 18-20; TR Page 419, lines 7-10 and 20-21. district court's docket record # 58 in November 8th, 2002, Defendant's designation of Dr./Mr./Kay Hale; TR Page 69, line 11, Defendant's attorney's opening statement; TR 502, lines 6-9, Defendant's attorney's closing statement which both are quoting Mr./Dr. Kay Hale's biased diagnoses to mislead the federal court and the federal grand jury; Whether an expert's testimony is reliable is a fact-specific inquiry; *Skidmore v. Precision Printing and Pkg., Inc.*, 188 F. 3d 606, 618 (5th Cir. 1999); *Kumbo Tires Co. v. Carmichael.*, 526 U.S. 137, 147, 152, 0119 S. Ct. 1167, 143 L. Ed. 2d. 238 (1999); Bocanegra v. Vicmar Serv., Inc., 320 F. 3d 581, 584 (5th Cir. 2003); *Moore v. Ashland chem., Inc.*, 151 F. 3d.269, 279 (5th Cir. 1998); *Pipiton v. Biomatrix., Inc.*, 288 F. 3d,

Expert Witness would lie and mislead the jury about this known fact than the federal district court and the federal grand jury could not rely on him to give an unbiased evaluation of Ms. Pourgholam and to help the trier of the fact(s) to understand the evidences in this case[9]

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243 (5th Cir. 2002);Dr./Mr. Kay Hale's] hypothesis, theory, and report was invalid and the district court erred in not striking and excluding Dr./Mr. Kay Hale's expert testimony for lack of sufficient grounding because his testimony did not offer accurate and significant statistical link between discrimination, hostile work environment, and severe intentional affliction of emotional distress on Ms. Pourgholam; Defendant's Trial Record Exhibit # 104, Mr./Dr./Kay Hale's report was invalid].

[9] *SEC v. Chenery Corp.*, 318 U.S. 80 (1943); *Burlington Truck lines v. United States*, 371 U.S. 156 (1962); *Motor Vechicle Mfrs. Assn v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); the Panel's decision is contrary to existing laws, in contrary to the United States Supreme Court's precedent, in conflict with the decision of the other courts as well as Fifth circuit court's decisions, and is substantially disproved by the record; a most basic tenet of administrative law is that courts speak through their decisions; the ambiguity in the order requires remand, and the courts should not presume. When the court's decision is in error, it is **the duty of the court to review, reverse, and remand so that the court can correct the errors, and not to decide it. In this case, there were reports of assaults at Aegis Irving, TX facility, there had been Officer Mark Talley's misconduct in investigating Aegis and Plaintiff's Direct Supervisor "Steen"; Officer Mark Talley's two court of indecency with a Child; Irving Police Officer's Miller use of Excessive force against a Hispanic man during a traffic stop, David Walker 's Registered Sex Offender information; and Aegis failure to investigate and take any action against "Steen" after receiving Plaintiff's EEOC complaint and while Aegis knew that had hired Steen in violation of his Parole; Please see Appendix I and II in support of Petition for a Writ of Certiorari; Pet. App. II; K, L, M, N, O, P, Q, R, S, T, U, V].**

CONCLUSION AND PRAYER

The Court should grant this petition and directly address the implementation of TCHRA and Title VII as well as Advanced Telemarketing d/b/a Aegis Communication Inc Acts of Obstruction of Justice and Perjury, and each/all Anti Child and Adult Porn as passed by United States Congress and signed by President George W. Bush.

This Court should clarify the decision of Federal Court in Enron, MCI World Com, Martha Stewart, President Bush's administration and senior members of Republican Party and other cases of conviction of individuals and corporations for Obstruction of Justice **while not convicting Advance Telemarketing Corp d/b/a Aegis Communications Group for charges of Obstruction of Justice and Perjury**.

This Court should also clarify the reason for treating Ms. Pourgholam TCHRA and Title VII case differently then that of Sheila White and Reeve cases. The Court should also clarify the reason for applying standards of Summary Judgment and Final Judgment are different in Ms. Pourgholam case then that applied in other cases including but not limited to Cleotex. Corp case.

Respectfully Submitted,

/s/ Shahla Pourgholam

SHAHLA POURGHOLAM
Pro Se, Petitioner
P O Box 824311
Dallas, TX 75382

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PRO SE PETITIONER
P O BOX 824311
DALLAS, TX 75382
shahlap@msn.com

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Alisa L. Pittman, Attorney for Respondent/Appellee
Advanced Telemarketing Group d/b/a Aegis Communications Group, Inc.

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Pipton v. Biomatrix., Inc., 288 f.3d, 243 (5th Cir. 2002)...(7)
Ruvalcaba v. City of Los Angeles., 64 F.3d 1323, 1328, (9th Cir. 1996).....(5)
Sanuders v. Shaw, 244 U.S. 317 (1917).....(2)
SEC v. Chenery Corp., 318 U.S. 80 (1943).....(8)
Skidmore v. Precision Printing and Pkg., Inc., 188 F. 3d 606, 618 (5th Cir. 1999).....(7)
Smith v. Transworld Drilling Co., 773 F. 2d 610, 612-613 (5th Cir. 1996).....(5).
United States v. Garner., 749 F.2d 281, 288 n.8 (5th Cir. 1985).....(4)
Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951).(3)
Walter Fuller Aircraft v. Rep of Philippines., 965 F.2d 1375, 1380 (5th Cir. 1992).....(3).
Williston basin Interstate pipeline Co. v. FERC, 165 f. 3d 54 (D.C. Cir. 1999).....(5)
Sheila White, Reeves, Enron, MCI World Com, Martha Stewart, and each/all cases involving conviction of individuals and corporations for Obstruction of Justice and Perjury.....(9)

CONSTITUTIONAL PROVISIONS, STATUTES, RULES, AEGIS POLICIES, AND DARRYL STEEN TERMS AND CONDITIONS OF PAROLE

From the United States Constitution:

Each/all anti Child and Adult Porn laws passed by U.S. Congress and signed by President Bush.

Title VII of Civil Rights Act of 1964, as amended, et Seq, 1981, 1991.
42 U.S.C. 2000(e), TCHRA, et, Seq, as amended.
TCHRA and Title VII of Civil Rights Act of 1964, Section 704 (a), 42 U.S. C. § 2000e-3(a), et seq; Section 706(g), 42 U.S.C. § 2000e-5(g); as amended. 42 U.S. C.§ 1001 et, 42 U.S.C §2000e, et seq. 1964, 1983, 1991,42 U.S. C. § 2000e-5(f)(3), Tex. Lab. Code § 21.051 (1), et seq; the common law of the State of Texas, and the Constitution of the State of Texas.
U.S. CONST., amend IV
U.S. CONST., amend V
U.S.CONST., Adminstrative Procedure Act.
Section 702, Section 703, Section 704, Section 706 (1), 706 (2)(A)(C)(D)(E)(F); Section 706, 5 U.S.C. § 706 (2000), APA § 554(c), 5 U.S.C. § 554 (c) (2000); APA § 706 (2) (A), 5 U.S.C. § 706 (2)(A)(2000).
Supreme Court Rule 13.1 and Supreme court Rule 44
28 U.S.C. § 1254 (1)

USCA 18 § 1503 and 1623
Relevant Portions of Federal Telecommunication Commission Rules, Sec. 64.1200
Improper Argument – J- § 4, § 5, § 6
FRE 415
FRCP 11
FRCP 45; FRCP 53; FRCP 26 and 33;
FRCP 37(c)(2) and FRCP 37(b); FRCP 60
Relevant Portions of Federal Rules of Evidence 609(a)(1), 609(b); Relevant Portions of FRE 701, 702, 703, 704. 705, 706; Relevant Portion of FRE 801; Relevant Portions of FRE 101 to 1001.
Texas Local Rules, Section III – Attorney's –AT-8 (b)
Relevant Portions of Government Code
§ 508.187 –62.102

OTHER AUTHORITIES

Relevant Portions of Texas Code of Criminal Procedure § 7 – § 7.01 (a), § 7.01 (b), § 7.01 (c)
Relevant Portions of Texas Code of Criminal Procedure § 7.02, § 7.02 (a)(2), § 7.02 (a)(3); § 7.02 (b)
Relevant Portions of Texas Code of Criminal Procedure, Article 42.12
Relevant Portions of Texas Code of Criminal Procedure, Article 21.14(a)
Relevant Portions of Texas Penal Code 20.02
Relevant Portions of Texas Penal Code 20.04(a)(4) Relevant Portions of Texas Penal Code, Chapter 21

Relevant Portions of Texas Penal Code, Chapter 22
Relevant Portions of Texas Penal Code 30.02
Relevant Portions of Texas Penal Code 43.26
Tampering with evidence; Destruction of Evidence

AEGIS POLICIES AND PROCEDURES

Aegis Employment Policy requirement to complete **Employee Application as Pre-employment and Post-Employment condition** with Aegis (it asks if applicant have had criminal background) Aegis employee Policy requirement to process **background check result** before hiring applicants..... **Aegis Policy to Hire Children Younger than 17 years old, Sixteen years old**
Aegis Policy for use of ID Aegis EEO Policy to treat employees your like son, daughter, spouse, etc..... Aegis at Will Policy
Aegis Policy about pay cut.....
Aegis Union free incentives

AEGIS SUPERVISOR "DARRYL STEEN'S" REGISTERED SEX OFFENDER TERMS AND CONDITIONS OF PAROLE

As a condition of his parole Darryl Steen was not to go in, on, or about **where** children commonly gather**, nor shall he supervise** or participate in any program that includes as

participants persons who are 17 years of age or younger Darryl Steen is not to **possess,** or to cause to **be purchased or** subscribed to, any literature, or videotapes **which** depict sexually explicit images, nude or partially nude people, **nor communicate or cause to communicate with a person for sexually explicit purposes through telecommunications or any other electronic means, including 1-900 services.**

Darryl Steen is not to cause to communicate with a person nude or partially nude **people.**

As a condition of his Parole Darryl Steen is not to own, posses, use, prohibited weapon or illegal weapon nor attempt or threaten to use any tool, implement **or object to** cause or threaten to cause any bodily injury.

As a condition of his Parole Darryl Steen is not to associate with persons of criminal background.

Darryl Steen was under mandatory Sex Offender Supervision and had to adhere to curfew **specified by his supervising parole officer.**

As a condition of his parole Darryl Steen is assigned to the highest level of supervision caseload.

As a condition of his parole, Darryl Steen is to be electronically monitored as approved by release's supervising parole officer that **Darryl Steen is not to participate in any**

volunteer or volunteer any services **without prior Board Panel approval.**

In paragraph 13 of his parole conditions, Darryl Steen as not to operate a motor vehicle unless specifically authorized by his supervising parole officer. Darryl Steen had three cars an economy size metallic blue economy car, a light yellow with wooden pattern brown stripe American made station wagon car, and a white van.

OPINION OF THE SUPREME COURT OF THE UNITED STATES

On 10/02/2006 Supreme Court of the United States denied Ms. Pourgholam Petition for a Writ of Certiorari.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit that gives rise to this Petition has been designated for limited publication or is unpublished, please see Pet. APP. One. Pages D-10 to D-11 in support of Ms. Pourgholam Petition for a Writ of Certiorari. **This is despite the fact that the Court of Appeals for the Fifth Circuit in Schweitzer v. Advanced Telemarketing** did not hold that the jury had favored Schweitzer, **but over turned the Jury's Verdict** and granted Advanced Telemarketing d/b/a Aegis Communications Group **a new trial** because the jury's verdict was against Aegis and the jury had awarded attorney's fees to Schweitzer. **On return with special instructions, Schweitzer lost her lawsuit and her case of age discrimination was dismissed; Please see Pet. APP. Two. R-52. Aegis also have had 10 other discrimination lawsuits, each and everyone of the discrimination lawsuits against Aegis has been dismissed in Federal Court for the Fifth Circuit, please see Pet APP Two. Page R-52.**

STATEMENT OF JURISDICTION

The date on which the United States Court of Appeals for the Fifth Circuit decided my case was on February 7th, 2006. Appellant's Petition for Panel Rehearing was postmark on February 21st, 2006. Appellant's case was dismissed because the court had quoted Defendant's assertion that the court and the jury **had favored** Defendant. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). In accordance with Supreme Court Rule 13.1, Ms. Pourgholam Petition for a Writ of Certiorari had been filed within 90 days. On October 2nd, 2006 the Supreme Court of the United States denied Ms. Pourgholam Petition for a Writ of Certiorari. In conformance with Rule 44 of the United States Supreme Court, this Petition for Rehearing for a Writ of Certiorari is filed within 25 days of the entry of the Supreme Court of the United States decision.

REASONS FOR GRANTING THE WRIT, STATEMENT OF THE CASE, STATEMENTS OF GENUINE ISSUES OF MATERIAL FACTS, ARGUMENTS, AND AUTHORITIES

It is central to due process that the courts and agencies must consider relevant evidences.[1] The Fifth

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[1] [See United States Constitution, Amendment IV and V; *Saunders v. Shaw*, 244 U.S. 317 (1917); Administrative Procedure Act ("APA"), Section 702, Section 703, Section 704, Section 706, Section 706 (1); Section 706 (2)(A)(C)(D)(E)(F); U.S.C. § 706 (2000), APA § 554(c), 5 U.S.C. § 554 (c) (2000); APA § 706 (2)(A), 5 U.S.C. § 706 (2)(A)(2000);

Amendment to the United States Constitution states in relevant part:

No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

The lead case interpreting the APA, requires that reviewing courts consider the *entire record* when determine whether the courts findings of fact are based on substantial evidence, "the court may not scour the record to find its own basis for decision." APA § 706 (2) (A), 5 U.S.C. § 706 (2)(A)(2000), the decisions must be reasoned and not arbitrary or capricious. **The court does not do its duty** when it merely decides upon a poor record; the panel should not dismiss this case on the false basis that there is no record, and the reviewing panel cannot supply a basis for a decision without specific references to the record.[2]

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the court shall give all interested parties opportunity for – (1) the submission and consideration of facts; *Universal Camera Corp. v. NLRB,* 340 U.S. 474 (1951)].

[2] [*Isbrandtsen Co. v. United States*, 96 F. Supp. 883, 892, (S.D.N.Y. 1951); Since the matters of this case involve violations of State and Federal TCHRA and Title VII, as amended, human rights, Constitutional Rights, State and Federal laws, FCC and FTC Rules and Regulations, Child and Adult Porn, threats with gun and assaults, pregnant employees that had forced abortions or were sent to Psychiatric Centers while working for Aegis and Aegis client(s), false advertisement, Obstruction of Justice and Perjury, and the fact that the relief is available; it would be appropriate for this court to grant Ms. Pourgholam Petition for A Writ of Certiorari so that the case can be totally reviewed with substantial and conclusive evidences; [Petition for A Writ of Certiorari, Pages1-30; Pet. App II, K - V; Appellant Brief, Pages 1-30; Appellant Reply Brief, Pages 1-15; and Appellant's Petition for Rehearing en banc, Pages 1-14; *Walter Fuller Aircraft v. Rep of Philippines,* 965 F.2d 1375,

The United States Supreme Court held in *Moses H. Cone Mem. Hosp v. Mercury Constr. Corp.*, 460 U.S. 1 (1983), that a case is immediately appealable as a final decision when the order terminates the case from federal district court. As explained, the order(s) appealed from conclusively determines the disputed question. Furthermore, Ms. Pourgholam appeal "resolves an important issue completely separate from the merits of the action." *Coopers*, 437 U.S. 468. **"An order that amounts to a refusal to adjudicate the merits plainly presents an important issue separate from the merits."** *Moses H. Cone*, 460 U.S. at 12. In the present case the review of the orders of the district court had been roadblock to dismissal of the case and final judgment. *Moses H. Cone*, 460 U.S. at 12 n. 13. The court's orders present an important issue completely separate from the merits of Plaintiff's claims. In addition, denial of immediate review would render impossible any review whatsoever.[3]

It is also important to note that in this case opposing counsel had made improper and inflammatory arguments in front of the jury in bad faith. This court has the power to grant a review of this case based on its appraisal of the

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1380 (5th Cir. 1992); *Moses H. Cone Mem. Hosp v. Mercury Constr. Corp.*, 460 U.S. 1 (1983)].

3 [*Hines v. Artois*, 513 F.2d 726, 730 (5th Cir. 1976); *United States v. Garner*, 749 F.2d 281, 288 n.8 (5th Cir. 1985); *Cooper & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978); *Firestone Tire& Rubber Co. v. Risjord*, 449 U.S. 368, 376 (1981); *Firestone*, 449 U.S. at 376; *Johnson v. Ford Motor Co.*, 988 F.2d 573, 582 (5th Cir. 1993)].

fairness of the trial and reliability of the jury's verdict.[4] *Williston basin Interstate pipeline Co. v. FERC*, 165 F. 3d 54 (D.C. Cir. 1999) holds that where there is an exceptional situational or policy change the change must be applied to existing cases. The essence of Williston is that a remand is required where the court changes the basis for its decision because the decision-making cannot be arbitrary.[5]

Accordingly, Plaintiff meets her burden of *prima facie case and Defendant's pretextual reasons* for discriminating against Plaintiff in violation of Title VII because in the instant case Plaintiff had established prima facie case and presented evidences that Defendant's reasons were a pretext for unlawful discrimination. Plaintiff had established that (a) Plaintiff was member of protected class(es); (b) Plaintiff was clearly qualified for her position; (c) Plaintiff was wrongfully and/or constructively discharged, demoted, and denied promotion; (d) after Darryl Steen had

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4 [Texas Criminal Code of Procedure, Article, 42.12, Texas Penal Code Chapter, 7, 20, 21, 22; prejudicial and incurable argument – J - § 4, § 5, and § 6; USCA 18 § 1503 and 1623; Relevant Portions of Texas Code of Criminal Procedure, Article 21.14(a) – Perjury and aggravated Perjury before a grand jury is unlawful; *Gray v. Bicknell*. 86 F.3d 1472, 1480, (8th Cir. 1996); *Smith v. Transworld Drilling Co.*, 773 F.2d 610, 612-613 (5th Cir. 1985); *Ruvalcaba v. City of Los Angeles*. 64 F.3d 1323, 1328, (9th Cir. 1996)].

5 [*Williston basin Interstate pipeline Co. v. FERC*, 165 f. 3d 54 (D.C. Cir. 1999); The Court of Appeals for the Fifth Circuit in Schweitzer v. Advanced Telemarketing did not hold that the jury had favored Schweitzer, but over turned the Jury's Verdict and granted Advanced Telemarketing d/b/a Aegis Communications Group a new trial because the jury's verdict was against Aegis and the jury had awarded attorney's fees to Schweitzer. On return with special instructions, Schweitzer lost her lawsuit and her case of age discrimination was dismissed].

Terminated Plaintiff, Defendant had never disclosed and failed to submit in Defendant's First and Second Motions for Summary Judgment and at the trial of this case that the person that Defendant had hired to replace Ms. Pourgholam was an Iranian female. (Defendant acted in a manner to indicate that the decisions made against Ms. Pourgholam were based on her national origin).

Furthermore, Defendant obstructed justice and defamed Plaintiff's character because Defendant took advantage of Defendant's Motion in Limine **to eliminate** evidences from the federal grand jury.[6] Thus, Plaintiff had established that: (a) Defendant acted intentionally or recklessly toward Plaintiff; (b) Defendant's conduct was extreme and outrageous; (c) Defendant's actions caused Plaintiff severe emotional distress; (d) the emotional distress suffered by Plaintiff was severe. **Therefore, Plaintiff meets her burden to show *severe Intentional Infliction of Emotional Distress.***[7]

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[6] [R. #171, Order on 03/18/2005, Second Page, Paragraph (1), (2), (3), (4), and (5); Benners v. Blanks Color Imaging, Inc., S.W.3d-, 2004 WL 937902, at * __ (Tex. App.-Dallas May 2, 2004) (no pet.h.).

[7] [In addition, in Defendant's Appellee's Brief, Defendant asserts, and/or applies, and/or confirms Plaintiff's claim that Defendant's direct and/or indirect associated hospitals; doctors, healthcare workers, and expert witness had misdiagnosed Plaintiff. [Appellee's Brief, Page 39; 52] As such, Defendant's conduct is sanctionable for publicly defaming Plaintiff's character in the presence of the court and in the presence of the jury. Defendant's defenses were false; Defendant had argued that Plaintiff did not have marks on her neck when she went to emergency room. [Appellee's Brief Page 44]. Plaintiff was prescribed medication for rash (marks) that were on Plaintiff's neck during this same visit. [Defendant's Trial Exhibit #113, Emergency Room visit on 02/13/02, doctor's instruction and medications prescribed, specifically shows medication for rash (marks on Plaintiff's neck); Similarly, on

Daubert, provides the analytical framework for determine whether expert testimony is reliable, relevant, and admissible under rule 701, 702, 703, 704, 705, and 706 of the Federal Rules of Evidence. *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 592-593, 579, 113 s. Ct. 2786, 125 L. Ed. 2d 469 (1993). The Court erred in not striking and excluding Defendant's Expert Witness after Defendant's attorney Alisa Pittman on Direct Examination of Dr./Mr. Kay Hale lied to the jury that Dr./Mr. Kay Hale had never met and never had any relationship with Defendant's Law Firm.[8] If Defendant's

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Sunday 06/03/2001 at 8:30 pm at night, Darryl Steen had signed off Plaintiff and took Plaintiff to Secured Quality Room for One-On-One session in an area that no one else was there and never return Plaintiff back to the phones. [Appellant's USCA Record Excerpts Tab 16, Pages SP-249, SP-241, SP-244, Particularly Page SP-244; Tab 17, Pages SP-474, SP-514]. On 06/05/2001, Dr. Michael Tran, Defendant's in network doctor had checked Plaintiff and misrecorded the date of the visit as "06/05/2007" and misreported the name of the company as "SBC", and misdiagnosed Plaintiff as psychosomatic. [Appellant's USCA Record Excerpts Tab 17, Page SP-514]. However, Dr. Tran in his deposition had said that the Plaintiff's painful vaginal bleeding on 07/31/2001 was due to prolonged antibiotics. [Plaintiff's Appendix in Support of R. #166]. As such Defendant's argument that Plaintiff was paranoid with psychotic features is untrue. [Appellee Brief, Page 43].

[8] [Court room transcript Page 398, lines 18-20; TR Page 419, lines 7-10 and 20-21. district court's docket record # 58 in November 8th, 2002, Defendant's designation of Dr./Mr./Kay Hale; TR Page 69, line 11, Defendant's attorney's opening statement; TR 502, lines 6-9, Defendant's attorney's closing statement which both are quoting Mr./Dr. Kay Hale's biased diagnoses to mislead the federal court and the federal grand jury; Whether an expert's testimony is reliable is a fact-specific inquiry; *Skidmore v. Precision Printing and Pkg., Inc.*, 188 F. 3d 606, 618 (5th Cir. 1999); *Kumbo Tires Co. v. Carmichael.*, 526 U.S. 137, 147, 152, 0119 S. Ct. 1167, 143 L. Ed. 2d. 238 (1999); Bocanegra v. Vicmar Serv., Inc., 320 F. 3d 581, 584 (5th Cir. 2003); *Moore v. Ashland chem., Inc.*, 151 F. 3d.269, 279 (5th Cir. 1998); *Pipiton v. Biomatrix., Inc.*, 288 F. 3d,

Expert Witness would lie and mislead the jury about this known fact than the federal district court and the federal grand jury could not rely on him to give an unbiased evaluation of Ms. Pourgholam and to help the trier of the fact(s) to understand the evidences in this case[9]

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243 (5th Cir. 2002);Dr./Mr. Kay Hale's] hypothesis, theory, and report was invalid and the district court erred in not striking and excluding Dr./Mr. Kay Hale's expert testimony for lack of sufficient grounding because his testimony did not offer accurate and significant statistical link between discrimination, hostile work environment, and severe intentional affliction of emotional distress on Ms. Pourgholam; Defendant's Trial Record Exhibit # 104, Mr./Dr./Kay Hale's report was invalid].

[9] *SEC v. Chenery Corp.*, 318 U.S. 80 (1943); *Burlington Truck lines v. United States*, 371 U.S. 156 (1962); *Motor Vechicle Mfrs. Assn v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); the Panel's decision is contrary to existing laws, in contrary to the United States Supreme Court's precedent, in conflict with the decision of the other courts as well as Fifth circuit court's decisions, and is substantially disproved by the record; a most basic tenet of administrative law is that courts speak through their decisions; the ambiguity in the order requires remand, and the courts should not presume. When the court's decision is in error, it is **the duty of the court to review, reverse, and remand so that the court can correct the errors, and not to decide it. In this case, there were reports of assaults at Aegis Irving, TX facility, there had been Officer Mark Talley's misconduct in investigating Aegis and Plaintiff's Direct Supervisor "Steen"; Officer Mark Talley's two court of indecency with a Child; Irving Police Officer's Miller use of Excessive force against a Hispanic man during a traffic stop, David Walker 's Registered Sex Offender information; and Aegis failure to investigate and take any action against "Steen" after receiving Plaintiff's EEOC complaint and while Aegis knew that had hired Steen in violation of his Parole; Please see Appendix I and II in support of Petition for a Writ of Certiorari; Pet. App. II; K, L, M, N, O, P, Q, R, S, T, U, V].**

CONCLUSION AND PRAYER

The Court should grant this petition and directly address the implementation of TCHRA and Title VII as well as Advanced Telemarketing d/b/a Aegis Communication Inc Acts of Obstruction of Justice and Perjury, and each/all Anti Child and Adult Porn as passed by United States Congress and signed by President George W. Bush.

This Court should clarify the decision of Federal Court in Enron, MCI World Com, Martha Stewart, President Bush's administration and senior members of Republican Party and other cases of conviction of individuals and corporations for Obstruction of Justice **while not convicting Advance Telemarketing Corp d/b/a Aegis Communications Group for charges of Obstruction of Justice and Perjury**.

This Court should also clarify the reason for treating Ms. Pourgholam TCHRA and Title VII case differently then that of Sheila White and Reeve cases. The Court should also clarify the reason for applying standards of Summary Judgment and Final Judgment are different in Ms. Pourgholam case then that applied in other cases including but not limited to Cleotex. Corp case.

Respectfully Submitted,

/s/ Shahla Pourgholam

SHAHLA POURGHOLAM
Pro Se, Petitioner
P O Box 824311
Dallas, TX 75382

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